

TRANSMITTAL OF APPEAL BRIEFDocket No.
AUT-10002/36

In re Application of: Jean P. Montoya

Application No.
09/826,786-Conf. #4084Filing Date
April 5, 2001Examiner
J. LoftisGroup Art Unit
3623Invention: METHOD AND SYSTEM FOR COLLECTING AND DISSEMINATING SURVEY DATA
OVER THE INTERNET**TO THE COMMISSIONER OF PATENTS:**Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal
filed: May 29, 2007 .The fee for filing this Appeal Brief is \$ 250.00 .☐ Large Entity ☒ Small Entity☐ A petition for extension of time is also enclosed.

The fee for the extension of time is _____ .

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This sheet is submitted in duplicate./John G. Posa/Dated: July 30, 2007John G. Posa
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of: Montoya

Serial No.: 09/826,786

Group No.: 3623

Filed: April 5, 2001

Examiner: J. Loftis

For: METHOD AND SYSTEM FOR COLLECTING AND DISSEMINATING SURVEY
DATA OVER THE INTERNET

APPELLANT'S BRIEF UNDER 37 CFR §41.37

Mail Stop Appeal Brief
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I. Real Party in Interest

The real party and interest in this case is J. Patrick Montoya, Applicant and Appellant.

II. Related Appeals and Interferences

There are no appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status of Claims

The present application was filed with 30 claims. Claims 8 and 11 have been canceled and claim 31 has been added. Claims 1-7, 9, 10 and 12-31 are pending, rejected and under appeal. Claims 1 and 17 are the independent claims.

**IV. Status of Amendments Filed Subsequent
Final Rejection**

An after-final amendment was filed in April 2007. The Advisory Action mailed May 11, 2007 indicated this after-final amendment would not be entered.

V. Summary of Claimed Subject Matter

Independent claim 1 is directed to a method of collecting and disseminating survey information . The method comprises the steps of establishing communication between a client and a survey collector having previously collected survey results; receiving, by the survey collector, a request from the client for the previously collected survey results; providing the client with a survey questionnaire from the survey collector; providing access to the previously collected survey results to the client only if the survey collector receives a response to the survey questionnaire from the client; and rejecting the client's request for the survey results if a response to the survey questionnaire is not received from the client. (Specification [0043-0053])

VI. Grounds of Objection/Rejection To Be Reviewed On Appeal

A. The rejection of claim 13¹ under U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,102,287 to Matyas in view of U.S. Patent No. 6,175,833 to West et al.

VII. Argument

A. The Rejection of claim 13.

Claim 13 depends from claim 12 which, in turn, depends from claim 1. This argument therefore concerns the combination of claims 1, 12 and 13. Although claims 12 and 13 were rejected under 35 §USC 103(a) over the Matyas/West et al. combination, the Examiner's argument with respect to these claims is limited to the teachings of Matyas. Indeed, the Examiner cites the same paragraph of Matyas, reproduced below, to reject both claims:

"At step 204, buyer 10 points and clicks on the hyper-link to obtain product evaluation information for the product of interest. At step 62, buyer's browser requests URL for HTML page(s) from evaluator 50, i.e., the buyer 10 requests survey results for the product of interest by clicking on the evaluator's hyper-link. At step 63, buyer's browser

¹ Appellant attempted to amend claim 1 with the limitations of claim 13 (and claim 12 upon which claim 13 depends) to place this case in better condition for appeal, but the amendment was not entered on the grounds that it would "narrow the scope of the claimed invention thereby requiring further consideration and/or search." (*See* advisory action.) Appellant believes this amendment should have been entered without the need for a further search, however, because Appellant attempted to import the language of dependent claims 12 and 13 into claim 1 *verbatim*, and the limitations of claims 12 and 13 were purportedly previously considered by the Examiner (*See* Appellant's Amendment after Final). Should Appellant prevail on the Appeal of claim 13, the limitations of claims 12 and 13 will be placed into claim 1 in exactly the same manner that Appellant attempted after Final.

receives HTML page(s) from evaluator 50. At step 205, buyer's browser views HTML page(s) received from evaluator 50. The buyer 10 uses the product evaluation information in deciding whether to purchase the product or not. For the purposes of the present invention we assume that the buyer 10 decides to purchase the product. ('287 Patent, 19:4-15)

Claims 12 and 13 set forth the combined limitation of “previously collected survey results ... including a composite survey response ... and wherein the composite survey response is unrelated to the survey questionnaire.” The Examiner argues that this limitation is disclosed in the paragraph reproduced above because “inherently the requested survey results are unrelated to the survey questionnaire if the user submits survey questionnaire for one product, but requests survey results for another product.” This is neither suggested implicitly or explicitly by Matyas. In Matyas, the buyer requests survey results for the “product of interest” to decide whether to purchase that product. This is clearly evident from the cited passage reproduced above: “[The] buyer 10 ... obtain[s] product evaluation information for the product of interest. ... [T]he buyer 10 requests survey results for the product of interest ... The buyer 10 uses the product evaluation information in deciding whether to purchase the product or not. For the purposes of the present invention we assume that the buyer 10 decides to purchase the product.” (See ‘287 Patent, 19:4-15, *above*.)

According to Matyas, the buyer may (or may not) fill out a survey for the “purchased product” (19: 30-34). Indeed, the subject matter of the questionnaire in Matyas is related *only* and *exclusively* to the “purchased product,” which was *exactly* the “product of interest” before the purchase since the buyer receives a survey questionnaire on the “purchased product” only after buyer purchases the “product of interest.” Therefore the subject matter of the survey questionnaire for the “purchased product” is exclusively and directly related to the requested survey results for the “product of interest.” This cannot be construed as stating implicitly or explicitly that the survey results may be “inherently unrelated” to the survey questionnaire, as suggested by the Examiner. In fact, Matyas *teaches precisely the opposite*.

If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). If, as suggested by the Examiner, a user of the Matyas system requested survey results for a different product, a prospective buyer could not use “the

product evaluation information in deciding whether to purchase the product or not.” An important goal of the Matyas system would be defeated and *prima facie* obviousness has not been establish.

Conclusion

In conclusion, for the arguments of record and the reasons set forth above, all pending claims of the subject application continue to be in condition for allowance and Appellant seeks the Board's concurrence at this time.

Respectfully submitted,

By: _____

Date: July 30, 2007

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APPENDIX A

CLAIMS ON APPEAL

1. A method of collecting and disseminating survey information comprising the steps of:
establishing communication between a client and a survey collector having previously collected survey results;
receiving by the survey collector a request from the client for the previously collected survey results;
providing the client with a survey questionnaire from the survey collector;
providing access to the previously collected survey results to the client only if the survey collector receives a response to the survey questionnaire from the client; and
rejecting the client's request for the survey results if a response to the survey questionnaire is not received from the client.
12. The method of Claim 1 wherein the previously collected survey results include a composite survey response.
13. The method of Claim 12 wherein the composite survey response is unrelated to the survey questionnaire.

APPENDIX B

EVIDENCE

None.

APPENDIX C

RELATED PROCEEDINGS

None.